UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

Civil Action No. 04-CV-12249-DPW

HARVARD REAL ESTATE-ALLSTON, INC., Plaintiff,)
v.)
KMART CORPORATION, KMART STORE 9424, Defendant.)))
)

AFFIDAVIT OF PLAINTIFF'S COUNSEL IN REGARD TO ATTORNEY'S FEES AND COSTS

We, Frank A. Flynn, Esquire, and Randolph C. English, Esquire, of the firm of Downing & Flynn, 85 Devonshire Street, Suite 1000, Boston, Massachusetts 02109, having personal knowledge in these regards, do hereby depose and say as follows:

- 1. The law firm of Downing & Flynn is counsel to Harvard Real Estate-Allston, Inc., the plaintiff herein.
- 2. Since October 25, 2004, the date the Defendant filed its Notice of Removal, Plaintiff's counsel has expended extensive time necessary for the following: to obtain remand of the Defendant's improper removal of the Plaintiff's state court claim, and to respond to counterclaims raised by the Defendant. The major areas involved included the following:

Research substantial federal jurisdictional issues raised by the Notice of Removal;

Preparation of Motion to Remand and substantial Memorandum of Law in support of Motion to Remand;

Research Defendants' ability to raise counterclaims in federal court where prohibited in commercial evictions under state law;

Prepare Motion to Dismiss Counterclaims and substantial Memorandum of Law in support of Motion to Dismiss Counterclaims;

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Review Defendant's Opposition to Motion to Remand and research numerous issues raised therein;

Review Defendant's Opposition to Motion to Motion to Dismiss Counterclaims and research numerous issues raised therein;

Research law and prepare substantial Reply Brief in Support of Motion to Remand;

Research law and prepare substantial Reply Brief in Support of Motion to Dismiss Counterclaims;

Review Defendant's Surreply Re: Motion to Remand and research further law cited therein;

Review Defendant's Surreply Re: Motion to Dismiss Counterclaims and research further law cited therein.

- 3. Counsel's time, including the time of the lead attorney and associates, in pursuing these matters, which time will shortly be billed to the Plaintiff, is reflected in the attached legal bills detailing a portion of the attorney time involved. Attorneys' time is billed at a rate of \$235.00 per hour, discounted to \$195.00 per hour.
 - 4. The total amount of legal fees as described herein equals \$ 39,882.00.
- 5. The plaintiff is entitled to its legal fees and costs incurred in pursuing the above-described matters, pursuant to 28 U.S.C. § 1447(c).
- 6. Counsel believes that the attorney's fees and costs enumerated above and attached hereto are reasonable for all of the matters described above.

7. Copies of the time entries as described above are attached hereto.

SWORN AND SUBSCRIBED to under the pains and penalties of perjury this Twelfth (12th) day of January, 2005.

Frank A. Flynn, H

Randolph C. English, Esq.

Downing & Flynn 85 Devonshire Street, Suite 1000 Boston, MA 02109 (617)720-3535

January 12, 2005

Harvard University

Invoice

In Reference To: K-Mart

	Hrs/Rate	Amount
Remand Issues		
11/1/2004 Prepare Motion to Remand	2.00	(00.00
The state of the s	3.00 230.00/hr	690,00
11/2/2004 Review Answer, Counterclaims and demand for Jury Trial from		201.00
Attorney Moorman	1.70	391.00
	230.00/hr	
Prepare Motion to Dismiss	2.50	575.00
	230.00/hr	
Research federal case law regarding applicable law	2.00	460.00
	230.00/hr	
11/3/2004 Research case law for Motion to Dismiss Counterclaims	1.50	345.00
	230.00/hr	3 12.00
Prepare Motion to Dismiss Kmart's Counterclaims	4.00	920.00
	230.00/hr	920.00
Research case law for Motion to Dismiss		276.00
research case law for Motion to Distilliss	1.20	276.00
11/5/2004 P	230.00/hr	
11/5/2004 Revise Motion to Dismiss	3.00	690.00
	230.00/hr	
11/9/2004 Research federal case law regarding jurisdiction and related issues	2.50	575.00
	230.00/hr	
Prepare Motion to Remand to State Court	2.50	575.00
	230.00/hr	2,2.00
	230.00/111	

In Reference to: K-Mart

	Hrs/Rate	_ Amount
11/10/2004 Revise Motion to Dismiss	5.00	1,150.00
	230.00/hr	1,150.00
Research federal removal issues related to bankruptcy	0.80	184.00
• •	230.00/hr	104.00
Prepare Motion to Remand	1.50	345.00
	230.00/hr	2 10100
11/11/2004 Revise Memorandum in Support of Motion to Remand	4.50	1,035.00
11/10/0004 P	230.00/hr	,
11/12/2004 Revise Memorandum in Support of Motion to Remand	6.50	1,495.00
11/15/2004 Parisman 1	230.00/hr	
11/15/2004 Review and revise Motion to Strike/Dismiss Counterclaims	0.80	184.00
Paying and region Manager 1 CT	230.00/hr	
Review and revise Memorandum of Law in suport of Motion to	1.50	345.00
Strike/Dismiss Counterclaims Prepare Motion to Remand	230.00/hr	
r repare Motion to Remand	4.50	1,035.00
Revise Motion to Remand	230.00/hr	
Revise Motion to Remain	1.00	230.00
11/16/2004 Review and revise memorandum of law in support of Motion to	230.00/hr	200.00
Strike Counterclaims	1.30 230.00/hr	299.00
Review and revise memorandum of law supporting Motion to	230.00/nr 1.50	245.00
Strike Counterclaims	230.00/hr	345.00
Review Motion to Dismiss Cournterclaims	1.00	230.00
	230.00/hr	230.00
Revise Motion to Dismis Counterclaims	3.00	690.00
	230.00/hr	070.00
11/17/2004 Revise Motion to Dismiss	9.00	2,070.00
	230.00/hr	_,0,0,00
11/18/2004 Review Motion to Dismiss	1.00	230.00
	230.00/hr	
Revise Motion to Dismiss	0.50	115.00
	230.00/hr	
11/19/2004 Review and revise Motion to Dismiss Kmart's Counterclaims	2.30	529.00
	230.00/hr	
Review and revise memorandum of law in support of Motion to	1.60	368.00
Dismiss Possica Mamarandum in Support of Matian to Dismiss	230.00/hr	EM # 00
Revise Memorandum in Support of Motion to Dismiss	2.50	575.00
	230.00/hr	

In Reference to: K-Mart

	Hrs/Rate	Amount
11/19/2004 Revise Motion to Dismiss	1.30	299.00
	230.00/hr	277.00
11/21/2004 Review and revise memorandum of law in support of Motion to	1.70	391.00
Remand	230.00/hr	391.00
11/22/2004 Review and revise Motion to Dismiss Counterclaims and	1.80	414.00
supporting memorandum of law	230.00/hr	414.00
Review and revise Motion to Remand	0.80	184.00
	230.00/hr	104.00
Review and revise memorandum of law in support of Motion to	1.30	299.00
Remand	230.00/hr	299.00
Revise memorandum Motion to Dismiss	2.50	575.00
	230.00/hr	373.00
Research additional federal case law regarding pending	0.80	184.00
duplicative litgation	230.00/hr	184.00
Revise statement of facts for Motion to Dismiss	1.00	230.00
	230.00/hr	230.00
Prepare exhibits for Motion to Dismiss	0.70	161.00
	230.00/hr	161.00
Revise memorandum for Motion to Dismiss	0.80	104.00
	230.00/hr	184.00
Revise Motion to Dismiss	0.70	161.00
	230.00/hr	161.00
11/23/2004 Review and revise memorandum of law in support of Motion to	230.00/III 1.60	269.00
Remand to State Court	230.00/hr	368.00
Review and revise Motion to Remand to State Court	230.00/HF 0.90	207.00
and revise relation to remaind to state court	230.00/hr	207.00
Research federal case law strictly constructing removal statute		220.00
resolution reading ease law strictly constituting removal statute	1.00	230.00
Prepare Memorandum in Support of Motion to Remand to State	230.00/hr	000.00
Court	4.00	920.00
Research federal law for Memorandum in Support of Motion to	230.00/hr 1.50	245.00
Remand	230.00/hr	345.00
Revise Memorandum in Support of Motion to Remand	230.00/nr 2.00	460.00
130 130 Memorandam in Support of Motion to Remain	230.00/hr	460.00
11/24/2004 Revise Memorandum in Support of Motion to Remand	2.00	460.00
and the second second and an expert of Motion to Remain	2.00 230.00/hr	460.00
Revise Memorandum in Support of Motion to Remand	0.70	161.00
120.120 Memorandam in Support of Protion to Remaild		101.00
	230.00/hr	

In Reference to: K-Mart

	Hrs/Rate	Amount
12/3/2004 Research case law regarding claim preclusion	2.50	575.00
e game provincia	230.00/hr	373.00
Research remand and removal issues for Reply Brief	2.70	621.00
···	230.00/hr	021.00
12/16/2004 Review Defendant's Opposition to Motion to Remand	1.30	299.00
	230.00/hr	277.00
12/17/2004 Review Kmart's Opposition to Motion to Dismiss	1.20	276.00
	230.00/hr	270.00
Research law regarding state court's authority to determine effect	1.00	230.00
of bankruptcy court's orders	230.00/hr	230.00
Research additional issues regarding federal question jurisdiction	1.50	345.00
	230.00/hr	5 15.00
12/18/2004 Research issues raised by Defendant's Opposition to Motion to	2.00	460.00
Remand	230.00/hr	
Prepare Reply Brief regarding Motion to Remand	3.50	805.00
40/40/200	230.00/hr	
12/19/2004 Prepare Harvard's Reply Brief regarding Motion to Remand	5.00	1,150.00
10/00/000	230.00/hr	,
12/20/2004 Revise Reply Brief regarding Motion to Remand	1.50	345.00
	230.00/hr	
Research issue regarding injunctive relief versus recovery of	0.50	115.00
possession	230.00/hr	
1/2/2005 Research issues regarding substantive versus procedural law in	2.50	575.00
federal diversity cases	230.00/hr	
1/3/2005 Revise Reply regarding Motion to Remand	4.00	920.00
1/4/2005 D. ' 1 ' D. 1 D. 1 D. 1 D. 1	230.00/hr	
1/4/2005 Review and revise Reply Brief regarding Remand Motion	1.80	414.00
Parian Variat Onnaitie P. C. II. P. 125	230.00/hr	
Review Kmart Opposition Brief regarding Remand Motion	0.90	207.00
Drawers Death, D. C. H. M. C. W. L. W.	230.00/hr	
Prepare Reply Brief regarding Motion to Dismiss Counterclaims	1.50	345.00
Dogograph incomes an annual in a much line and line of	230.00/hr	
Research issues regarding public policy of summary process statute	1.00	230.00
Review Reply Brief regarding Motion to Remand	230.00/hr	
Review Reply Direct regarding Motion to Remand	0.80	184.00
Research case law regarding post-confirmation lease violations	230.00/hr	100.00
research case law regarding post-confilmation lease violations	0.60	138.00
	230.00/hr	

In Reference to: K-Mart

	Hrs/Rate	Amount
1/4/2005 Research additional federal case law regarding removal and	1.50	345.00
remand Provide Republic Print recording Motion to Remand	230.00/hr 2.50	575.00
Revise Reply Brief regarding Motion to Remand	2.30 230.00/hr	3/3.00
1/5/2005 Revise Reply Brief regarding Motion to Remand	2.50	575.00
1/3/2003 Revise Reply Difer regarding wouldn't Remaind	230.00/hr	373.00
1/6/2005 Review and revise reply brief regarding remand	1.60	368.00
170/2003 Review and revise topiy offer regarding femand	230.00/hr	300.00
Review federal remanded summary process cases	1.40	322.00
Terror Todoral Tomandod Sammary process cases	230.00/hr	322.00
Review and revise reply brief regarding remand motion	1.60	368.00
1071077 und 107150 tops, octobring romand motion	230.00/hr	200.00
Review and revise reply brief regarding Motion to Dismiss	2.30	529.00
Counterclaims	230.00/hr	0.27700
Revise Reply Brief regarding Motion	3.50	805.00
	230.00/hr	
Research cases cited by Kmart regarding compulsory	0.80	184.00
counterclaims under federal rules	230.00/hr	
Additional research of federal case law for Reply Brief	1.50	345.00
• •	230.00/hr	
Revise Reply Brief	0.80	184.00
• •	230.00/hr	
Revise Reply Brief regarding Motion to Remand	3.00	690.00
	230.00/hr	
Review and revise Reply Brief regarding Motion to Dismiss	2.00	460.00
	230.00/hr	
Revise Reply Brief regarding Remand Motion	0.80	184.00
	230.00/hr	
Research substantive versus procedural law	1.00	230.00
	230.00/hr	
1/7/2005 Review and revise reply brief regarding Motion to Remand	1.60	368.00
	230.00/hr	
Conference with Associate regarding revisions	0.70	161.00
	230.00/hr	
Review and revise reply brief regarding Motion to Dismiss	1.70	391.00
Counterclaims	230.00/hr	##C 0 0 0 0
Revise Reply Brief regarding Motion to Remand	2.30	529.00
	230.00/hr	

In Reference to: K-Mart

	-	Hrs/Rate	Amount
1/7/2005 Revis	e Reply Brief regarding Motion to Dismiss Counterclaims	0.70	161.00
		230.00/hr	
Revis	e Reply Brief regarding remand	0.50	115.00
		230.00/hr	
Revis	e Reply Brief regarding Motion to Dismiss	0.50	115.00
		230.00/hr	
Prepa	re exhibits to Reply Brief	0.40	92.00
		230.00/hr	
Resea	rch regarding Equitable Remedies as applicable to summary	0.60	138.00
	ss case	230.00/hr	
1/9/2005 Revie	w removal petition and Motion to Remand regarding	2.30	529.00
	uling conference preparation	230.00/hr	
	re for Hearing on Harvard's Motion to Remand and Motion	2.50	575.00
	smiss Counterclaims; research of federal law regarding val jurisdiction	230.00/hr	
	are outline of all issues for oral argument	2.50	575.00
		230.00/hr	
1/10/2005 Revie	ew Kmart Opposition to Remand Motion	1.70	391.00
1, 10, 2000 110 / 1		230.00/hr	
Revie	ew Reply Brief and cases regarding Remand	1.40	322.00
110111	, , , , , , , , , , , , , , , , , , ,	230.00/hr	
Revie	ew sur-reply by Kmart regarding Remand	0.90	207.00
1.011	on our reply of remaining animals	230.00/hr	
Revie	ew sur-reply by Kmart regarding Dismissal of Counterclaims	0.80	184.00
10071	on sur repriy by remain regarding Dismission or boundersums	230.00/hr	101100
Revie	ew memorandum of Associate regarding Remand	0.70	161.00
ROVI	ow memorandam or rissociate regarding remains	230.00/hr	101.00
Revie	ew memorandum of Associate and cases regarding Dismissal	1.60	368.00
	ounterclaims	230.00/hr	500.00
*	are outline for Hearing argument regarding Motion to Remand	2.50	575.00
Ттере	tic outline for freating argument regulating frection to Remaild	230.00/hr	375.00
Rese	arch additional case law for argument on Motion to Remand	1.50	345.00
1030	aren additional case law for argument on motion to remain	230.00/hr	313.00
Revis	se outline for Hearing on Remand Motion	0.70	161.00
TCV I.	of turning on Remains Motion	230.00/hr	101.00
Prene	are outline for Hearing on Motion to Dismiss Counterclaims	2.50	575.00
Tiepa	are outline for from ing on motion to Dishinss Counterolands	230.00/hr	373.00
Pavi	ew Kmart sur-reply regarding Motion to Remand	0.70	161.00
Kevi	ow issilate sur-repry regarding friedon to Remaild	230.00/hr	101.00
		43Q.00/NF	

In Reference to: K-Mart

		Hrs/Rate	Amount
1/10/2005 Review Kmart's sur-reply regarding Motion to Dismiss		0.50 230.00/hr	115.00
Research cases cited in Kmart's sur-replies		0.70 230.00/hr	161.00
1/11/2005 Preparation for U.S. District Court Hearing regarding Remand an Dismissal of Counterclaims issue	d	3.50 230.00/hr	805.00
Attendance at scheduling conference and Hearing regarding Motion to Remand		1.60 230.00/hr	368.00
Prepare for Hearing on Motion to Remand and Motion to Dismiss	S	3.00 230.00/hr	690.00
SUBTOTAL:	[204.00	46,920.00]
Subtotal of charges 15% Courtesy Discount Total Legal Services Rendered			\$46,920.00 (\$7,038.00) \$39,882.00